

18.07.2023
Sl. No.26(DL)
srm

C.O. No. 1961 of 2023
Ramendra Nath Ganguly
Versus
Murali Mohan Mitra

Mr. Soumen Das
...for the Petitioner.

Mrs. Sohini Chakrabarty,
Ms. Prajaaini Das
...for the Opposite Party.

This revisional application has been filed challenging an order passed by the learned Civil Judge (Junior Division), 3rd Additional Court at Alipore, South 24-Parganas, in Ejectment Suit No.222 of 2018.

By the order impugned, the learned court below allowed an application for amendment on the ground that the said amendment was necessary for adjudication of the real questions in controversy between the parties and for the ends of justice.

The learned Advocate for the defendant/petitioner submits that the order impugned suffers from following irregularities:

- (a) The amendment was allowed at a belated stage.
- (b) The order impugned did not disclose any reason.

(c) The facts sought to be incorporated changed the nature and character of the suit property.

(d) The daughter did not have the authority to affirm the amendment application as the power of attorney was defective.

(e) Lastly, chance to file additional written statement was not given to the defendant.

Having gone through the schedule of amendment, this Court finds that an elaboration of the ground of reasonable requirement was sought to be incorporated by inserting paragraphs 1(a), 4(a), 4(b) and 4(c). The suit was filed for eviction on the ground of reasonable requirement. The plaintiff claimed to be 88 years old and a patient suffering from hip joint disorder. After replacement of the hip joint, the doctor had advised the plaintiff to reside in the ground floor. Thus, the tenant was directed to vacate the ground floor so that the plaintiff could use the ground floor for his own use and occupation. It has been stated that the plaintiff did not have any other suitable accommodation. It also appears that there are other co-sharers to the property in question.

By way of an amendment, the plaintiff sought to introduce further grounds for requirement of the premises in question, namely, use by the children and their spouses when

they come to visit the father and also for additional rooms so that the children can reside in the premises to look after the ailing father. The further contention that the defendant has suitable accommodation was also sought to be introduced.

Having considered the schedule of amendment, this Court finds that those are only elaborations as to why the plaintiff requires the suit premises for use and occupation of the plaintiff as also the family members of the plaintiff. Further elaboration as to the rooms, kitchen, privy, bathroom, etc. required has been made. This amendment does not amount to changing the nature and character of the suit property. It is also not introduction of a new case. It is an additional attack to the already existing ground of reasonable requirement.

The following decisions are referred to by this court.

The Hon'ble Apex Court in the case of *Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and others* reported in (2007) 6 SCC 737, held that if the amendment enables the Court to pin-pointedly consider the real dispute between the parties and helps to decide the case more satisfactorily, the amendment ought to be allowed.

In the case of *Raghu Thilak D. John vs. S. Rayappan* reported in AIR 2011 SC 699, it was held that amendment should generally be allowed, unless it was shown

that permitting the amendment would be unjust and would cause prejudice to the opposite side, which could not be compensated by costs or would deprive him of a right which had accrued to him with the lapse of time. Amendment may also be refused if the same is barred by time.

In the decision of *Rajesh Kumar Aggarwal and others vs. K.K.Modi and others* reported in *AIR 2006 SC 1647*, the Apex Court held that the Court was not to go into the merits.

The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

In the decision of *Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.* decided in *Civil Appeal No. 5909 of 2022*, the Hon'ble Apex Court laid down the principles of governing amendment in paragraph 70 of the decision. The relevant portion is quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:-

- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
- (ii) to avoid multiplicity of proceedings, provided
 - (a) the amendment does not result in injustice to the other side,
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
- (ii) the amendment changes the nature of the suit,
- (iii) the prayer for amendment is malafide, or
- (iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.”

The amendment was rightly allowed. The defendant shall be allowed to file additional written statement within a period of three weeks from the date of communication of this order.

The order impugned is modified to the above extent.

All points raised with regard to the correctness of the statements made in the amendment application shall be decided in the trial upon evidence.

As the defendant is being allowed an opportunity to file the additional written statement, the suit shall be removed from the peremptory board.

The allegation that amendment is belated, it is not accepted as the same is not hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure. Evidence has not started.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)